

In re) Fair Hearing No. 9407
)
Appeal of)

The petitioner appeals her disqualification from receiving ANFC benefits due to the receipt of a lump sum inheritance.

7. [Petitioner] has received no ANFC benefits

since July, 1989.

8. [Petitioner] has spent all of the inheritance she received in July, 1989, and currently has resources which are below the \$1,000.00 resource maximum under ANFC regulations.

9. [Petitioner] reapplied for benefits, based on the fact that her resources were below the applicable maximum.

10. DSW denied [petitioner's] reapplication, on the grounds that the lump sum rule prevented her from receiving any benefits until June, 1990.

11. On September 13, 1989, DSW issued a Corrected Notice, which stated:

Your ANFC-Grant \$653 will be closed effective August 1989 as you received \$11,135.90 in an inheritance benefit all in one payment (Policy Basis WAM 2250.1).

You will not be eligible for ANFC again prior to June, 1990 so you will need to use the inheritance benefits to meet your living expenses.

You will not automatically receive benefits after that time. You will need to reapply and be found eligible. The period for which you are closed may be changed if: the money you received is no longer available to you for reasons beyond your control; you pay certain medical expenses that use up a portion of the inheritance; and event occurs which would have changed the amount paid if your family were still on assistance (for example: a change in rent).

Please tell your worker if any of the above changes occur since they may shorten your period of ineligibility.

If someone joins your household during the time you are ineligible for ANFC, you may apply for benefits for that person only. If eligible, he or she will receive a separate payment until you begin receiving ANFC benefits again.

12. [Petitioner] filed a timely request for fair hearing concerning DSW's denial and revised notice.

In addition, the following additional facts are

proposed based on the evidence adduced at hearing.

13. The petitioner spent the entire sum of her inheritance, with the exception of \$36.20, prior to September 13, 1989, the date on which she received notice of her lump sum disqualification by the department.

14. The petitioner was able to provide documentation through cancelled checks of the expenditure of \$11,535.16 of the inheritance, which was spent as follows:

a) \$6,024.16 of the money was spent for household furnishings and appliances, including living room and bedroom sets for the petitioner and each of her three children, a washer and dryer, a vacuum cleaner, a stereo and table and bed linens. These items were purchased either because the petitioner had not owned them before (i.e., the washer, dryer, vacuum cleaner, stereo and her bedroom set) or needed to replace items which were in poor repair (the children's beds, the living room furniture).

b) \$1,356.23 was spent on bills and loan repayments, including auto, credit card, lawyers fees, and reimbursement of an overpayment to DSW.

c) \$985.38 was spent on food, including bulk food purchased for a freezer and since consumed.

d) \$983.30 was spent on clothing for the petitioner and school clothing and shoes for her three children.

e) \$510.41 was spent on miscellaneous Christmas and birthday presents given to the petitioner's children and other family members and friends.

f) \$445.00 was spent on rent.

g) \$313.60 was spent on car, life and property insurance. \$36.20 of that amount was spent after September 13, 1989.

h) \$277.25 was spent for gasoline and mini-mart products.

i) \$151.20 was spent on miscellaneous hardware items including paint, wallpaper, brushes, pans and laundry detergent.

- j) \$117.87 was spent on utilities.
- k) \$111.56 was spent on eating out.
- l) \$84.62 was spent for school snacks and books.
- m) \$74.88 was spent for an antique dish and some knickknacks.
- n) \$45.00 was spent for a child's permanent wave.
- o) \$4.75 was spent for movies.

15. The petitioner spent no money on real estate, securities or other investments of any kind.

ORDER

The Department's decision to count \$11,135.90 available to the petitioner under the lump-sum rule resulting in the denial of her ANFC application is reversed and remanded for calculation of a new period of disqualification based on the actual availability of \$36.20 only.

REASONS

Department of Social Welfare regulations require that a recipient of ANFC notify the department promptly when she receives a "lump sum payment of earned or unearned income" which payment shall then be "counted as income" with certain enumerated exceptions, none of which is applicable here.

W.A.M. § 2250.1.

The regulation provides further that:

Lump sum payments which are not excluded should be added together with all other non-ANFC income received by the assistance group during the month. When the total less applicable disregards exceeds the standard of need for that family, the family will be ineligible for ANFC for the number of full months derived by dividing this total income by the need standard

applicable to the family. And remaining income will be applied to the first month of eligibility after the disqualification period.

W.A.M. 9 2250.1.

This so-called "lump-sum rule", basically requires the ANFC recipient to budget that lump-sum to cover expenses which would ordinarily be covered by ANFC for some period into the future. Because the ability to budget and survive requires an advance understanding of how the rule will operate and what the petitioner must do, the Supreme Court has held that notice of the rule at a meaningful time and in a meaningful manner is an essential part of the fair administration of this rule. See Gardebring v. Jenkins, 108 S.Ct. 1306 (1988). In this context fairness usually requires, at a minimum, that the recipient understand she is to report the receipt of a lump-sum income immediately and that the department follow up on that report with an appropriate explanation of how that money will be viewed by the department, including any exceptions or exclusions which might be available to the recipient. See Fair Hearing No. 8342. The department's own procedures manual directs workers to explain the details of the disqualification by written notice. See P-2240(A)(8).

In this case, the petitioner understood her duty to report the receipt of her inheritance and did so immediately. The department concedes that, through an error, it failed to explain to the petitioner the effect and operation of the lump-sum rule. In fact, not only did the

department fail to give the correct information, but actually gave the petitioner incorrect written information indicating that she was ineligible because of excess resources and would be eligible as soon as she spent all but \$1,000.00 of her inheritance. The department does not disagree that the petitioner spent her money in the space of some eight weeks based on that information from the department and acted reasonably in doing so. The only issue remaining is whether the lump-sum rule can and should be used to disqualify the petitioner, who is now totally without funds through no fault of her own, from receiving ANFC benefits.

Because of nearly nationwide confusion among welfare agencies and workers in distinguishing between "resources" and "lump-sum income", this issue has come before administrative tribunals and state courts in other jurisdictions where the operation of the disqualifying rule has been stayed based on a number of theories, including equitable estoppel.¹ After reviewing these decisions, the hearing officer is persuaded to follow those which find that the language in the regulation itself is sufficient to deal with such a situation.

The Department of Social Welfare regulations provide that the disqualification period may be shortened as follows:

The period of ineligibility due to a lump sum benefit may be recalculated if:

1. An event occurs which, had the family been receiving assistance, would have changed the amount paid,
2. The income received has become unavailable to the family for circumstances beyond its control. Such circumstances include, but are not limited to, death or incapacity of the principal wage earner, or the loss of shelter due to fire or flood.
3. The family incurs and pays for medical expenses which offset the lump sum income.

W.A.M. § 2250.1

Under paragraph 2 above the petitioner's period of disqualification may be shortened if she has shown that the income she received has become "unavailable" to her for "circumstances beyond her control". Those terms are not further defined in DSW's regulations nor further restricted by federal regulations. See 25 C.F.R. § 233.20(a)(3)(ii)(F)(2). Thus, the board must determine what these terms mean and whether the facts fit the definitions.

"Availability" in the context of resources issues has long been held to mean "actual" rather than theoretical availability. Heckler V. Turner, 105 S.Ct. 1138 (1985), 42 U.S.C. § 602(a)(14). What this comes down to is whether the recipient can physically and legally get and use the money for her own purposes. In this case, the \$11,885.26 cash she received as an inheritance is no longer "available" to her because it has been spent on various consumer goods, services and household expenses. The money is now out of her hands and can't be used to defray other expenses. While some of the cash has been converted to assets (mainly

furniture and clothing) which could conceivably be sold and reconverted to cash, it is unreasonable to imagine that the petitioner could recover anything near the full original value of these ordinary household items after they have been used for almost half a year.² It makes more sense to find that money spent on goods is only "available" to the family if it has been converted to an asset which is easily made liquid at or near its original value, such as real estate, bonds, stock purchases and the like. The petitioner's purchases do not fall into this latter category so it is reasonable to conclude that her lump-sum is in fact "unavailable".

While the term "circumstances beyond the control" of an individual usually implies some act of nature or disaster, there is no reason why the disastrous "circumstances" cannot be created by a third party's bad advice. It is not unreasonable to conclude that a situation is "beyond the control" of a person because she had erroneous information from the department which prevented her from dealing in an informed way with the situation. It is reasonable to conclude, therefore, that the expenditure of the \$11,885.26 was due to circumstances beyond her control. Once the department notified the petitioner on September 13, 1989, of the correct applicable regulations, the petitioner can be found responsible for her expenditures. However, at that point, there was only \$32.60 of the inheritance left. It can therefore be said that the petitioner only acted with

full knowledge and control over \$32.60 of the total sum.

As the vast majority of the inheritance, namely \$11,852.66³, which she was expected to use in lieu of ANFC payments, was actually unavailable to the petitioner for circumstances beyond her control, the petitioner's disqualification period should be shortened to reflect that unavailability.

FOOTNOTES

¹e.g., Beatham v. Commissioner, Maine Dept. of Human Services, #CV-88-50, June 6, 1989, Maine Superior Court, Salem County Welfare v. O.B., October 11, 1988, #6557-88, State of New Jersey Office of Administrative Law, In Re J.N. v. Washington State Dept. of Social and Health Services, #0189 A-272, April 28, 1989 (attached).

²It should be noted that the department does not argue that the petitioner should be required to attempt to sell her furniture and clothing in order to make the cash available again.

³The September 13, 1989, notice to the petitioner counted \$11,135.90 as available to the petitioner. The parties offered no explanation as to why that figure was less than the original sum of \$11,885.26.

#